Filed 1/30/19 P. v. Cadence CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ATHENA CADENCE, Defendant and Appellant.	A149311 (San Francisco City & County Super. Ct. No. 225096)

A jury convicted defendant and appellant Athena Cadence of false imprisonment (Pen. Code,[1] § 236), making criminal threats (§ 422), and three counts of simple assault (§ 240). The jury also found that appellant used a deadly weapon during the commission of the false imprisonment (§ 12022, subd. (b)). The trial court suspended imposition of sentence and placed appellant on probation for three years, subject to various conditions. Appellant challenges the sufficiency of the evidence supporting the criminal threats conviction. She also claims the trial court erroneously deemed a prosecution witness an expert witness for the defense, and consequently erred by instructing the jury with CALCRIM No. 360 in this regard. We affirm.

I. EVIDENCE AT TRIAL

In July 2015, appellant, a transgender female, moved into Swords to Plowshares, a multi-unit residence for veterans with mental-health issues. Soon after moving into her apartment, appellant began lodging numerous complaints, including rent disputes, and

[1] All further undesignated statutory references are to the Penal Code.

engaging in conflicts with another tenant, Miranda Penders, who also identified as a transgendered person.

Monique Crossley, a property manager at Swords to Plowshares, met with appellant four or five times in her office to discuss appellant's complaints. During their interactions, appellant would usually act pleasant at the beginning of their conversation, but would later become aggressive. By October 2015, Crossley felt that appellant was stalking her; as a result, Crossley began entering the building from the rear entrance to avoid encountering appellant.

On November 3, 2015,[2] just before Crossley arrived for her 9:00 a.m. shift, she received a call from Michael Eide, a licensed therapist and case manager at Swords to Plowshares, advising her that appellant had threatened to shoot her. Crossley told Eide that she was almost at work, and she would discuss the issue with him when she arrived. Crossley entered the building through the rear entrance, met with Eide, and reviewed the incident report regarding appellant's threat. The incident report indicated that at 2:30 a.m., appellant attempted to enter the staff area of the building, and when the on-duty program monitor questioned her, appellant stated that she was going to shoot Crossley in the face. Crossley was scared and concerned for her safety.

Sometime between 9:00 a.m. and 10:00 a.m. on November 3, Shelley Funk, a program monitor at Swords to Plowshares, was sitting at the front desk in the lobby when appellant complained that her computer chair was missing from the community room. Funk explained that as the program monitor, she was directed not to engage with tenants, but to defer tenant issues to the case managers and property managers. Funk told appellant that she would talk to Crossley to help her figure out what had happened to the chair. Funk went to Crossley's office, which was behind Funk's desk and separated by a closed door where the staff offices were located. When Funk told Crossley that appellant wanted to meet with her, Crossley told Funk that she did not have time to see appellant at that moment and asked Funk to make an appointment for her.

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[2] All further references to the year are to 2015, unless otherwise stated.

Funk returned to the front desk and told appellant that Crossley was unable to see her right then but that Funk would set up an appointment for appellant to meet with Crossley about the missing chair. Funk testified that as she began to look at Crossley's computer calendar, appellant said, "[W]ell, that's really unfortunate for her because now I have shoot her in the face," or, "Well, that's unfortunate. I'll probably have to shoot her in the face now." Funk immediately went back to Crossley's office, which was directly behind the front desk where Funk was stationed, and told Crossley what appellant had said. Crossley was scared, upset, concerned for her safety, and told Funk to call 911. Crossley left the building soon thereafter and did not return to work for several days; she later obtained a restraining order against appellant.

After calling 911, Funk warned the other staff members about appellant's threat against Crossley. Funk also prepared an incident report regarding appellant's threat of physical violence against Crossley. In the incident report, Funk did not reference that appellant used the word "now" in conveying the timing of the threat. On cross-examination, Funk acknowledged this discrepancy but remained steadfast in her recollection that appellant had used the word "now" when referring to shooting Crossley.

Due to appellant's threat to harm Crossley, Eide conducted an evaluation of appellant, pursuant to Welfare and Institutions Code section 5150. Eide spoke with appellant for about 20 to 25 minutes about the threat she had made against Crossley. Eide described appellant's demeanor as very calm, but her language was somewhat nonsensical and psychotic. As to Crossley, appellant said, "I will shoot her in the face. I will hurt her . . . . I will fuck her up." Appellant told Eide that she had ordered an airsoft rifle which she expected to receive in the mail soon. Although appellant made bizarre references to spaceships and exhibited other delusional thoughts, Eide did not include this information in his assessment, partly out of concern for appellant's privacy. Eide had no recollection of calling Crossley on the morning of November 3 to report appellant's threat.

Co-tenant Miranda Penders testified that appellant acted in a harassing manner toward her. Appellant frequently spoke in the language of an active combat soldier and

continually tried to recruit Penders to go fight ISIS with her. Appellant's conduct became increasingly aggressive towards Penders. During one incident in November, Penders was in an elevator when the doors closed on appellant as she was getting in the elevator. Appellant became angry and kicked the side of the elevator. Appellant repeatedly told Penders that she was going to kill her and that there was no way she was going to let her live in the building. In another incident, appellant sat next to Penders in the computer room and told her that she needed to be tortured or killed.

On November 24, Penders walked out of her room and saw appellant standing in front of the elevator, wearing fatigues and holding her airsoft rifle. Penders stepped into the elevator with another tenant; when appellant got in the elevator, Penders attempted to exit. Appellant shoved Penders back into the elevator, and Penders was unable to get out. Inside the elevator, appellant lifted the weapon to shoot Penders in her face at point-blank range. Penders turned her face and was hit in the ear with a pellet.

Appellant left the building only to return a few minutes later, shooting her airsoft rifle into the lobby. As Funk was attempting to run for cover, she was hit by two pellets.

Appellant was apprehended at a nearby liquor store, holding the airsoft rifle, which had an attached bayonet. Following her arrest, she was transported to the Southern Police Station. At the station, Sergeant Brian Stansbury saw appellant sitting on a bench. Sergeant Stansbury introduced himself and asked appellant if she would like something to drink or eat. Appellant demanded meat. When Sergeant Stansbury explained that the station did not have any meat, appellant became very angry and yelled profanities at him. Appellant then spit at Sergeant Stansbury.

Appellant testified on her own behalf. Appellant's father physically abused her. In 2004, when appellant was 17 years old, she enlisted in the army. Appellant was deployed to Iraq for one year. When appellant was 21 years old and still in the army, she began hormone replacement treatment therapy.

Appellant had been involuntarily hospitalized over 20 times for mental health issues. Appellant was first diagnosed with mental health issues in 2009 when she began seeing an army psychiatrist.

She testified that she experienced hallucinations during most of October through early December. She had auditory hallucinations, such as hearing jets and helicopters that she never saw, hearing her name, and receiving coded instructions from people who were not there. Appellant also saw "humanoid aliens" and text from an alien language. She was convinced that the cars she saw outside were sentient and conscious beings. Appellant believed she was on Mars, living in a mock city that the Mormons had created to look like San Francisco.

When taken into custody on November 24, appellant believed she was a prisoner of war in a war against ISIS, the Church of Latter Day Saints, and the Klu Klux Klan. She was not certain who brought her to the facility, but she believed that the police had been convinced to turn against her, while she was actually working with and for the police.

John Watts Podboy, Ph.D., a clinical forensic psychologist in private practice, opined that appellant suffered from an anxiety disorder—specifically, post-traumatic stress disorder ("PTSD") based on early life trauma, combat experiences, and an extremely difficult transition from male to female. According to Dr. Podboy, appellant had a history of severe depression and mania, as well as possible bipolar disorder. In April 2016, Dr. Podboy reviewed appellant's medical records and interviewed appellant for over three hours.

Dr. Podboy opined that during the fall, from late August to early December, appellant exhibited specific signs of PTSD, including hallucinations. Dr. Podboy also opined that appellant was undergoing or suffering from a psychotic episode (which he defined as a time-limited state in which the subject is disconnected from reality and acts in a "very bizarre" manner) beginning in late September or early October and continuing through the end of November.

Katrina Peters, M.D., a doctor at the psychiatric unit at San Francisco General Hospital, supervised appellant as a patient from November 24 through December 1. Dr. Peters met with appellant on November 30 and on December 1. On appellant's discharge, Dr. Peters diagnosed her as having unspecified schizophrenic spectrum

disorder and other psychotic disorders. The diagnosis was based on her review of appellant's medical records, as well as her observations of appellant's behavior and symptoms—including appellant's delusions that she was in "special ops" and had received a "kill order" from Obama, and hallucinations that she was ordered to shut down police stations and burn down churches. Dr. Peters also described appellant's disorganized behavior, mood disturbances, anger, irritability, and agitation. The psychotic disorder was severe enough that appellant was involuntarily held in the hospital beyond the Welfare and Institutions Code section 5150 period and twice involuntarily medicated.

According to Dr. Peters, appellant did not believe she had a psychiatric disorder and refused medication. It is unusual, she testified, for patients to deny having such disorders. Dr. Peters did not believe appellant was feigning, given the persistence of her delusional thoughts. In addition, if appellant had been pretending, she would have been asleep for days, given the potency of the medications she had received; if appellant had not already had a chemical imbalance, she would have been unable to stay awake or function after receiving the injections.

II. DISCUSSION

A. Substantial Evidence Supports the Criminal Threats Conviction.

Appellant argues the evidence was insufficient to sustain a conviction for criminal threats.

We must affirm the jury's verdict if it is supported by substantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) On substantial evidence review, we " 'view the whole record in a light most favorable to the judgment, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the decision of the trial court.' " (*DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336.) "We may not substitute our view of the correct findings for those of the [jury]; rather, we must accept any reasonable interpretation of the evidence which supports the [jury]'s decision." (*Ibid.*)

The elements of the offense of criminal threats are: (1) the defendant "willfully threatens to commit a crime which will result in death or great bodily injury to another

person"; (2) the defendant made the threat "with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out"; (3) "on its face and under the circumstances in which it is made," the threat "is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat"; (4) the threat actually caused the person threatened "to be in sustained fear for his or her own safety or for his or her immediate family's safety"; and (5) the threatened person's fear was reasonable under the circumstances. (§ 422, subd. (a); *People v. Toledo* (2001) 26 Cal.4th 221, 228.)

Appellant challenges the sufficiency of the evidence supporting the second and third elements.

1. The Threat Was Intentionally Conveyed Through a Third Party.

Appellant argues that there was insufficient evidence of the requisite specific intent, asserting that she did not intend to convey her statement to Crossley because she made it to Funk.

A victim need not receive a threat directly; rather, a third-party witness may relay it to the victim. "Section 422 does not in terms apply only to threats made by the threatener personally to the victim nor is such a limitation reasonably inferable from its language. The kind of threat contemplated by section 422 may as readily be conveyed by the threatener through a third party as personally to the intended victim." (*In re David L.* (1991) 234 Cal.App.3d 1655, 1659 (*David L.*)) However, the threat must still be intended for the victim, even if conveyed through another. (*People v. Felix* (2001) 92 Cal.App.4th 905, 908 (*Felix*).)

David L., *supra*, 234 Cal.App.3d at page 1657, held that a statement made to a third party constituted a criminal threat under section 422. In that case, the minor and the victim physically fought in the presence of a third party, the victim's friend. (*Id.* at p. 1658–1659.) That night, the minor called the third party and divulged his plan to shoot the victim. (*Ibid.*) The court inferred from the "climate of hostility" and the manner in which the threat was made that the minor intended to threaten the victim personally. (*Id.*

at p. 1659.) The defendant knew his threat would be passed on to the victim because the victim and the third party were friends. (*Ibid.*) By contrast, in *Felix, supra*, 92 Cal.App.4th at page 913, the court held that the defendant's statements made during a therapy session did not constitute criminal threats because there was no evidence that the defendant knew his statements to his therapist would be revealed to the victim.

The case at hand is analogous to the relationship and "climate of hostility" in *David L.* Funk was the designated intermediary between the tenants and the case/property managers such as Crossley. In the past, Funk had received numerous complaints at the lobby front desk from appellant and had passed them along to Crossley for her to address. Funk testified that she always deferred to building staff about tenants' situations. On the date in question, after appellant approached Funk about the computer chair, Funk went to speak to Crossley, then returned to appellant to tell her Crossley was not available. Thus, when appellant learned of Crossley's unavailability from Funk and immediately threatened to shoot Crossley because she did not receive Crossley's prompt attention, there was substantial evidence from which the jury could reasonably infer that appellant made her threatening statement with the intent of having Funk convey it to Crossley.

Here, unlike the defendant in *Felix*, appellant did not make the threatening statement during a private therapy session. (See *People v. Teal* (1998) 61 Cal.App.4th 277, 281 ["One may, *in private*, curse one's enemies, pummel pillows, and shout revenge for real and imagined wrongs—safe from section 422 sanction"], emphasis added.) When appellant made her threatening statement to Funk, Funk was seated at the front desk in the lobby of the residence. This was a public area of Swords to Plowshares, where other residents mingled and came and went on a routine basis.

Although appellant asserts that her statement to Funk was made in "the context of a therapeutic relationship [,]" there is no evidence that Funk was acting as appellant's psychotherapist or any other type of confidant. While Funk may have received training in understanding the tenants' issues, nothing suggests that her role as a program monitor included duties beyond clerical ones. On the day in question, Funk was acting as the

residence's front desk clerk. Appellant had spoken with Funk acting in that same capacity on numerous occasions with the purpose of having Funk pass along her complaints to the property and case managers at Swords to Plowshares. Significantly, when appellant initially approached Funk at the front desk on November 3, appellant spoke to Funk with the intent of having Funk communicate her concerns about the missing computer chair to Crossley, the property manager on duty. Appellant's immediate, hostile response to Funk having just let her know that Crossley was unable to meet with her at that moment provided substantial evidence that appellant intended for Funk to convey her threat to Crossley for the purpose of instilling fear in her. (See, e.g., *Felix*, *supra*, 92 Cal.App.4th at p. 914 [there was insufficient evidence that the defendant specifically intended his statements to be conveyed as threats to his ex-girlfriend, in part because there was no evidence as to what preceded his statements to his psychotherapist, why he made the threats, or what he wanted his psychotherapist to do with them].)

Appellant's knowledge of Funk's intermediary status between the managers and tenants, combined with the fact that on the day in question Funk had just spoken to Crossley on appellant's behalf, could lead a reasonable trier of fact to infer that she intended Funk to convey her threat to Crossley.

2. The Threat Was Conveyed With the Requisite Immediacy and Specificity.

Appellant maintains that her statement to Funk was not unequivocal, unconditional, immediate or specific. According to appellant, the words, "I'll probably have to shoot her in the face[,]" were at most an "angry utterance" suggesting a *possibility* of a threat at some unspecified time. We disagree.

It is well established that section 422 is not aimed at punishing emotional outbursts or mere angry utterances. (See *People v. Teal*, *supra*, 61 Cal.App.4th at p. 281 ["Section 422 is not violated by mere angry utterances or ranting soliloquies, however violent"].) Rather, section 422 is aimed at punishing defendants who make threatening statements with the purpose of instilling fear in others. (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1141 (*Ricky T.*).) Section 422 "contemplates a threat so 'unequivocal, unconditional, immediate, and specific' that it conveys to the victim an 'immediate

prospect of execution' " (*David L., supra,* 234 Cal.App.3d at p. 1659) and " 'a gravity of purpose' " (*People v. Wilson* (2010) 186 Cal.App.4th 789, 808).

Section 422, however, does not require details such as the time and precise manner of execution to be expressed. (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.) "A threat is sufficiently specific where it threatens death or great bodily injury." (*Ibid.*) Appellant's statement that she would shoot Crossley in the face was a sufficiently specific threat of great bodily injury.

After being told that she would need to make an appointment with Crossley, appellant told Funk, "[W]ell, that's unfortunate. I'll probably have to shoot her in the face now." This was an unequivocal and unconditional threat. It is true that Funk's incident report did not include the word "now[,]" but at trial, Funk was confident in her belief that appellant had used the word "now" when referring to shooting Crossley. Even without the word "now," the threat was specific and imminent. In direct response to Crossley's unavailability to meet with appellant to discuss her missing chair, appellant told Funk that she would shoot Crossley in the face. A statement need not detail the exact time or manner of execution to be considered a criminal threat. (*People v. Butler, supra,* 85 Cal.App.4th at p. 755.) Rather, " '[i]mmediacy' " means "that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out." (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538.) "[G]ravity of purpose" concerns whether the statements have "credibility as indications of serious, deliberate statements of purpose" to harm the victim. (*Ricky T., supra,* 87 Cal.App.4th at p. 1137.)

To the extent appellant's statement that she would "probably" have to shoot Crossley could be interpreted as suggesting an ambiguity, " ' it is the circumstances under which the threat is made that give meaning to the actual words used. Even an ambiguous statement may be a basis for a violation of section 422.' [Citation.]" (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1433; see *People v. Bolin* (1998) 18 Cal.4th 297, 340.) "The [trier of fact] is 'free to interpret the words spoken from all of the

surrounding circumstances of the case.' [Citation.]" (*People v. Hamlin, supra,* at p. 1433.)

Here, the jury reasonably could have inferred that appellant intended to shoot Crossley in the face. Due to the growing contentiousness of her contacts with appellant, Crossley had become increasingly fearful of appellant. She would enter the building from the back so as to avoid coming into contact with appellant. On the early morning of November 3, appellant had been attempting to access the staff area where Crossley worked. Later that morning, Crossley received not one but two messages that appellant said she was going to shoot her in the face. Moreover, appellant later unequivocally stated to Eide, "I will shoot [Crossley] in the face." These surrounding circumstances dispel any ambiguity of the threat, suggesting a gravity of purpose and immediacy. In this context, the jury reasonably concluded that appellant's threat was not merely an ambiguous, angry utterance.

People v. Orloff (2016) 2 Cal.App.5th 947 (*Orloff*) informs our decision. There, the defendant was confined to a wheelchair. (*Id.* at p. 950.) He regularly went to a particular pharmacy to fill prescriptions and repeatedly became disruptive and verbally abusive to employees. (*Id.* at p. 951.) The store's manager finally told him not to return and that his prescriptions would be transferred to any store that he wanted. (*Ibid.*) A short time later, the defendant called the manager and told him, " 'You're dead,' " and hung up. (*Id.* at pp. 951–952.)

Orloff affirmed the defendant's conviction for making criminal threats to the store manager. The court rejected the defendant's argument that his telephonic statement was simply an angry utterance that could not reasonably induce sustained fear since the manager knew he was confined to a wheelchair. (*Orloff, supra,* 2 Cal.App.5th at p. 954.) *Orloff* held the manager "reasonably believed that, despite [the defendant's] disability, he could carry and fire a gun." (*Id*. at p. 953.) The defendant's statement "was a death threat that induced sustained fear. Unlike *Ricky T.*, [the defendant's] threat was not merely 'an angry adolescent's utterances.' [Citation.]" (*Id*. at p. 954.)

Appellant's growing hostility toward Crossley, combined with her statement to Funk, which came on the heels of being told Crossley could not meet with her, could lead a reasonable trier of fact to infer that appellant's threat to shoot Crossley in the face was unequivocal, unconditional, immediate, and specific.

B. Qualifying Eide as an Expert and Including Him in CALCRIM No. 360 Was Harmless Error.

Appellant contends that the trial court erred by including Michael Eide as an expert in the CALCRIM No. 360[3] instruction because Eide was never qualified as an expert and did not provide any expert testimony. We agree. However, as we shall explain, this error was harmless under any standard.

Eide testified as a lay witness for the prosecution. During direct examination, Eide described his Welfare and Institutions Code section 5150 evaluation of appellant. During cross-examination, defense counsel questioned Eide about the bizarre comments that appellant had made. Eide stated that during his conversation with appellant on November 3, appellant expressed her delusional beliefs about a spaceship, Mars, Mormons, and Crossley being part of the Islamic State. Defense counsel also asked a series of questions, explicitly based upon Eide's "training and experience," about his ability to identify signs and symptoms of a person decompensating, having a psychotic episode, or suffering from delusions.

On redirect, Eide testified that he had never witnessed anyone, including appellant, suffering from a psychotic episode at Swords to Plowshares. The trial court also asked Eide questions that were written by the jurors. One juror asked how accurately Eide could diagnose a person having a psychotic episode. Eide responded that he was "very accurate," adding: "It's based on my training and my experience with other clients. It's

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[3] CALCRIM No. 360 provides as follows: " <*Insert name*> testified that in reaching (his/her) conclusions as an expert witness, (he/she) considered [a] statement[s] made by <*insert name*>. [I am referring only to the statement[s] <*insert or describe statements admitted for this limited purpose*>.] You may consider (that/those) statement[s] only to evaluate the expert's opinion. Do not consider (that/those) statement[s] as proof that the information contained in the statement[s] is true."

something I'm really accurate about. It's not just psychosis, but other diagnoses. Bipolar depression, I've had practice diagnosing people." Another juror asked: "On November 3rd, was Ms. Cadence having what you would consider a psychotic episode?" Eide responded: "No, it was not a psychotic episode." Defense counsel did not object to these questions.

Then, over defense counsel's objection, the trial court elicited Eide's opinion as to whether appellant was experiencing a psychotic episode on November 24. Eide opined that appellant was not having a psychotic episode on that date either.

At the jury instruction conference, the trial court indicated that it would give CALCRIM No. 360 regarding appellant's statements to three experts: Dr. Podboy, Dr. Peters, and Eide. The trial court stated that although Eide began as a percipient witness, he "turned [sic] into an expert" when defense counsel requested that he be deemed an expert. Defense counsel denied ever asking that Eide be qualified as an expert. Defense counsel further argued that it made no sense to consider Eide—a witness called by the prosecution—a defense expert, or to allow his "ultimate opinion" that appellant was not having a psychotic episode.

Over defense counsel's objection, the trial court instructed the jury as follows: "Michael Eide, Dr. John Podboy and Dr. Katrina Peters testified that in reaching their conclusions as expert witnesses, [they] considered statements by Athena Cadence and statements contained in medical records. You may consider those statements only to evaluate the expert's opinion. Do not consider those statements as proof that the information contained in the statements is true."

The record contains no requests for Eide to be qualified as an expert by either the prosecution or the defense. Unlike the extensive Evidence Code section 402 hearings for Dr. Podboy and Dr. Peters, there is no such record regarding Eide's qualifications to provide expert testimony. Defense counsel's limited questioning about Eide's training and experience in recognizing the signs of someone with a mental illness did not convert Eide into an expert. Also, as noted by appellant's trial counsel, it would be incongruous

for the defense to request Eide to be qualified as an expert, in light of the fact that his testimony undercut appellant's unconsciousness defense.

Appellant maintains that this error so negatively impacted her defense of legal unconsciousness that she was denied a fair trial. She asserts that listing Eide in CALCRIM No. 360 erroneously cloaked his testimony with the "mystique" of expert opinion, and that due to his "expert status," the jury was led to believe that Eide's opinion had more validity and weight than it actually did. Not so. The jury was fully instructed on its role in assessing witness credibility in general (CALCRIM No. 226), as well as in evaluating conflicting evidence (CALCRIM No. 302). The jury was also instructed that it was not required to accept as true or correct either expert witness testimony (CALCRIM No. 332) or opinion testimony by lay witnesses (CALCRIM No. 333). We presume the jury understood and followed these instructions. (See *People v. Edwards* (2013) 57 Cal.4th 658, 746.)

Appellant also claims she was prejudiced because CALCRIM No. 360 prevented the jury from considering her statements to Eide as evidence that she was exhibiting signs and symptoms of a psychotic episode at the time of her offenses. We disagree. The jury instruction merely prevented the jury from accepting *the truth of* appellant's bizarre statements to Eide about spaceships and Crossley's alleged membership in the Islamic State. It did not prevent the jury from assessing whether her delusions rendered her unconscious or unable to form the requisite specific intent.

Finally, it is all but inconceivable that the jury would have returned a different verdict if Eide had not been included in the instruction limiting expert opinion. Even without considering the truth of her statements to Eide, the jury heard extensive testimony from appellant regarding her hallucinations, as well as other nonhearsay testimony from her expert witnesses, all of which supported her unconsciousness defense.

III. DISPOSITION

The judgment is affirmed.

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Brown, J.

We concur:

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Pollack, P.J.

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Streeter, J.